vacant at the time the policy issued. *Queen Ins. Co. of America v. Chadwick,* 13 Tex. Civ. App. 318; *Conn. Fire Ins. Co. v. Tilley,* 88 Va. 1024. There are many *dicta* contrary to the case in point, upon the ground that where there is no written application and no terms have been agreed upon by parol, except the amount, the insured must be charged with knowledge that the policy he receives, contains the contract binding upon him. *Waller v. Northern Assur. Co.,* 10 Fed. 232; *Brown v. Commercial Fire Ins. Co.,* 86 Ala. 189; *Wierengo v. Amer. Fire Ins. Co.,* 98 Mich. 621.

LANDLORD AND TENANT—ACTION BY LANDLORD TO RECOVER POSSESSION—DEFENSES.—WALLACE V. OCEAN GROVE CAMP MEETING ASS'N OF METHODIST EPISCOPAL CHURCH, 148 FED. 672 (N. J.).—*Held,* a tenant, who repudiates that relation and claims title adversely to the landlord, cannot defend against an action by the landlord to recover possession on the ground of the insufficiency of the notice to terminate the lease.

Where the relation of landlord and tenant is disclaimed by the tenant, or the tenant repudiates the title of his landlord, neither a demand of possession or notice to quit is necesary to enable the landlord to maintain an action for possession of premises. *Carger v. Fee,* 40 Ind. 572; 39 N. E. 93. A landlord is not bound to give his tenant notice to quit, if the tenant has taken possession under an adverse title. *Williams v. Hensley,* 1 A. K. Marshall 181. The notice to quit to which a tenant at sufferance is entitled cannot be claimed by one who has asserted any title that directly or impliedly negatives the right to put an end to his interest. *Kunzie v. Wixom,* 39 Mich. 384. In ejectment the defense of adverse possession is inconsistent with a tenancy, and exempts plaintiff from the necessity of proving a notice to quit. *Wolf v. Holton,* 92 Mich. 136; 52 N. W. 459. A tenant at will cannot defend an action of ejectment by the landlord on the ground that he had no notice to quit, where the answer expressly denies plaintiff's title, and sets up ownership in defendant. *McCarthy v. Brown,* 113 Cal. 15.

LANDLORD AND TENANT—DEFECT IN PREMISES—INJURIES TO OCCUPANTS.—HATCH ET AL. V. MCCLOUD RIVER LUMBER CO., 88 PAC. 355.—*Held,* occupants of premises under a lease assumed the risk of injury from a wire extending from an electric light pole without the premises to an anchor about two feet within the premises which was so located at the time of the lease and was known to them.

Where the occupants of a tenement house are permitted, without objection, to use the yard, and there is no restriction in the lease against such use, an easement is thereby created in favor of the tenant, and the landlord is liable for injuries resulting from his failure to make the yard safe. *Canavan v. Stayvesant,* 27 N. Y. Sup. 413. A nuisance being allowed to remain in the same position a sufficient length of time without any endeavor on the part of the defendant by the exercise of reasonable care and diligence, to ascertain its dangerous position; and having let the premises with a nuisance, existing thereupon, he is, under the circumstance, liable for injuries sustained by the tenant, *Ahern v. Steel,* 115 N. Y. 203. In an action for personal injuries, it appears that in the yard of a tenement house in which apartments were rented from defendant to plaintiff's father, a large flat stone stood almost perpendicularly against the fence, and had so stood for several months, and at the time the apartments were let; that while the plaintiff's child was playing around the stone, it fell and injured her, it was held that the defendants were

liable, though they had no actual knowledge of the existence of the stone, or its dangerous nature. *Schmidt v. Cook et al.*, 33 N. Y. Sup. 624.

MASTER AND SERVANT—DEFECTIVE CAR—DUTY OF INSPECTION.—SHANKWEILER V. BALTIMORE & O. R. R. Co., 148 FEDERAL REPORTER 195. A railroad company is not chargeable with negligence which will render it liable for an injury to an employee caused by the breaking of a defective brake-rod, where the defect was latent and in a place where it was not discoverable by such an inspection as is customarily made by well-regulated and prudently conducted railroads, which inspection was made and was the only kind which was practicable, or which could be made without seriously interfering with the operation of trains.

It is the duty of defendant railroad company, receiving a freight car from another company, to inspect it, and to see that it is reasonably fit for service; and, in the event that a freight car is received with a brake-beam in such a defective condition that defendant's brakeman, whose duty it is to couple the foreign car with those of defendant, and is injured in his attempt to make such coupling, and the brakeman has no knowledge of the condition of the brake-beam, and its condition cannot be readily seen, defendant is liable for such injury. *Missouri Pacific Railway Company v. Barber*, 44 Kan. 612, 24 Pac. 969.

MASTER AND SERVANT—INJURY TO SERVANT—VICE PRINCIPAL—TIVNAN V. KEAHON, 101 N. Y. SUPP. 1076. Houghton and Scott, J.J., *dissenting*.

Held:—One through whom the proprietor of a livery stable conducted it, and who is the manager and superintendent thereof, and employs help, is the vice-principal of the master, for whose negligence in failing to instruct a common laborer how to start an engine, great danger being attendant thereon unless it was started properly, the master is liable.

A foreman in a mine, whose duty it was to direct ten or twelve men what work to do, and take care of mine, but who is subject to the orders of the pit boss and the superintendent, is the fellow servant and not vice-principal of a laborer under his control, who is injured while assisting the foreman in the execution of his work. *What Cheer Coal Co. v. Johnson*, 56 Fed. 810; *Railroad Co. v. Baugh*, 13 Sup. Ct. 914. A section boss having charge of keeping track in order, who hired and discharged his men, but who was subject to the orders and directions of a track master, to whom it was his duty to report needed repairs, and to receive from him the necessary tools and materials, was a fellow servant of a section hand injured from the defective condition of a hand car, the defects in which were known to such section boss, and were suffered to exist through his negligence. *Barringer v. Delaware & H. Canal Co.*, 19 Hun. 216. In an action to recover for injuries sustained while unloading dirt under a foreman who was in charge of the men, that he was not a vice-principal, but fellow servant, although he had power to discharge for cause. *Schroeder v. Flint and P. M. R. Co.*, 103 Mich. 213; 61 N. W. 663.

NEGLIGENCE—DANGEROUS PREMISES—CARE REQUIRED.—GILFALLAN V. GERMAN HOSPITAL & DISPENSARY IN THE CITY OF NEW YORK, 100 N. Y. SUPP. 601. The intestate, employed as plumber by the defendant, attempted to leave the defendant's premises by means of a ladder and wall, although the premises were provided with a safe entrance and exit. After climbing to the top of the wall and as he stepped out on what he supposed to be the roof of an ash-lift, he fell into a well sustaining fatal injuries. *Held*, that as